TIKAN BIN SULAIMAN v. REGINA.

[C. Cr. A. (Murray-Aynsley, C.J., Mathew, C.J. (F.M.) and Brown, J.) July 7, 1952]

[Singapore — Criminal Appeal No. 5 of 1952]

Evidence — Evidence Ordinance, ss. 3 and 106 — Burden of proof — One standard of proof.

The judgment in this appeal lays down an important ruling on the question of burden of proof in criminal cases in this Colony.

The appellant had been convicted of murder and counsel for the appellant took exception, inter alia, to the direction in law by the learned trial Judge on this question of burden of proof. The Court pointed out that section 3 of the Evidence Ordinance gives a definition of "proved" and this section lays down one standard of proof whether the burden is on the prosecution or the defence. The practice of directing the jury that the Crown must prove its case beyond reasonable doubt, in so far as it imposes on the Crown a higher burden than that imposed by the Evidence Ordinance, is only a matter of practice, like the direction given concerning evidence of accomplices.

The burden of proving that the case of the accused comes within exceptions to section 300 of the Penal Code is clearly set out in section 106 of the Evidence Ordinance.

The Court went on to clarify this application of certain English cases in this Colony. Since **Mancini's case**(1), it is clear that **Woolmington's case**(2) only applies to the question of intention. By the Penal Code the burden of proving intention in these cases has always been placed on the prosecution. Therefore **Woolmington's case**(2) has no effect here.

Cases referred to:—

(1) *Mancini's case* (1942) A.C. 1; (1941) 3 All E.R. 272.

(2) *Woolmington's case* (1935) A.C. 462.

COURT OF CRIMINAL APPEAL.

M. B. Brash (*P. T. Wong* with him) for the appellant.

E. P. Shanks (Crown Counsel) for the respondent.

Murray-Aynsley, C.J., delivering the judgment of the Court of Criminal Appeal said: — In this case the appellant was charged with, and convicted of, murder. The circumstances of the crime were that both the appellant and the deceased formed part of the crew of a Dutch ship lying in the roads, the appellant as a steward and the deceased as a junior engineer officer. This ship, the "Drente", appears to have been a cargo ship carrying also a few passengers.

During the service of dinner the appellant turned off a wireless set which was playing in the saloon. The appellant contended that this was done innocently; the deceased and others thought otherwise. It was, in any case, no part of the duties of the appellant. It was also alleged that the appellant went up to the deceased and tapped him on the head. This also he denied. The deceased left the saloon without finishing his meal; the appellant went out into the alley-way and walked up and down. He should, it would seem, have been serving the meal. The deceased went to his cabin and was seen weeping. While there the deceased said to a fellow officer: "I wish I could teach him a lesson."

Somewhat later the deceased emerged from his cabin and approached the appellant, who was in the alley-way. The appellant said "do you want me?" The two were not seen again until shortly afterwards the appellant was observed to have a dagger or knife in his hand to be standing by the deceased who was lying on the ground with several wounds. The deceased died shortly afterwards and was certainly unarmed. The weapon carried by the appellant was not recovered. Three days later the appellant made a voluntary statement to a Magistrate which was put in by the defence in the course of the trial.

The appellant at no time denied that he stabbed the deceased. The substantial issues to be decided were: first, as to the intention of the appellant when he stabbed the deceased; second, if the intention required were of the kind required by sections 299 and 300 of the Penal Code, whether there were circumstances either of justification or of mitigation to bring the matter within one of the exceptions to section 300.

The appellant gave evidence at the trial. The most noticeable thing about his evidence was the fact that he said he was unable to remember many matters which were contained in his original statement. Briefly his story was that he had been seized by the deceased from behind and man-handled. There was no other evidence on this and, among other things, it was difficult to reconcile with the almost complete absence of blood on the clothing of the appellant. The appellant said that he had the weapon on his person before the incident in the saloon. He admitted that he had gone below after the incident but said it was for another purpose. No sheath was found on him.

In the course of his summing-up, on the question of intention, the learned Judge wisely refrained from entering into the technicalities of sections 299 and 300 and simply directed the jury that anyone who caused the death with the intention of causing death committed the offence of murder. This direction was favourable to the appellant. There was ample evidence on which the jury could find that the appellant had an intention to cause death. By finding the appellant guilty in the light of this direction, the jury must be taken to have found that the appellant had an intention to cause death and this finding is amply justified.

The further and more seriously contested issue was as to the existence of circumstances of justification or mitigation.

The defence contended that the appellant acted in self-defence and was entitled to an acquittal or to a verdict of culpable homicide not amounting to murder under exception 2 of section 300. As has been explained, the jury by their verdict must have found an intention to cause death. In view of the fact that the deceased was unarmed it does not seem possible to bring the matter within the ambit of the exception, much less to justify a verdict of not guilty. Exception was taken to the direction in law on the question of self-defence. In view of what has been said above this appears to be immaterial.

The defence further argued that it was a case of grave and sudden provocation.

As regards exception 1, this by the Penal Code is a question of fact, and, therefore, not subject to the limitations found in English Law. The effect of exception 2 was, in our opinion, put to the jury with sufficient clearness.

It was, however, contended that there was insufficient direction on the question of burden of proof. The learned Judge in the plainest terms told the jury that the prosecution had to prove its case beyond reasonable doubt. As regards the question of grave and sudden provocation, the question of proof is clearly set out in section 106 of the Evidence Ordinance. Section 3 gives a definition of "proved", viz: "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

The learned Judge said to the jury "If you think that the accused was gravely and suddenly provoked, that he was deprived of his powers of self-control, it will be proper for you to convict of culpable homicide not amounting to murder. If, on the other hand, having weighed all the evidence together you are convinced that he is not covered by this exception, that is to say, you do not believe him, then that is, of course, murder".

That appears to us to be more favourable to the appellant than a strict application of the provisions of Evidence Ordinance. The facts on the issue of grave and sudden provocation were put to the jury in a way that was, if anything, favourable to the appellant.

On the state of the evidence the jury were amply justified in negativing the contention of the defence and the verdict is not open to attack.

As it appears to us that there is some uncertainty as to the application of certain English cases in this Colony, we think it proper to add some remarks on the subject. Since *Mancini's case*[1] it is clear that *Woolmington's case*[2] only applies to the question of intention. By the Penal Code the burden of proving intention in these cases has always been placed on the prosecution. Therefore *Woolmington's case*[2] has no effect here.

It should further be noted that the Evidence Ordinance only lays down one standard of proof whether the burden is on the prosecution or the defence.

We think that the practice of directing the jury that the Crown must prove its case beyond reasonable doubt, in so far as it imposes on the Crown a burden higher than that imposed by the Evidence Ordinance, is only a matter of practice, like the direction given concerning the evidence of accomplices. It is right, as a matter of prudence, that such a direction should be given; but, as in the case of accomplices, if the jury disregard the warning their verdict is not vitiated.

For the foregoing reasons we dismissed the appeal.

Appeal dismissed.

SEOW TAI KENG v. REGINA.

[A. Cr. J. (Brown, J.) May 27, 1953]

[Singapore — Magistrate's Appeal No. 219 of 1952]

Finance Regulations, 1950, Reg. 29(1) — Controller's power to require information — Incriminating statement — Evidence Ordinance, s. 24.

This was an appeal against the conviction of the appellant under reg. 17(1) of the Finance Regulations, 1950, on a charge that the appellant being resident in Malaya and entitled to sell 130 tahils of gold failed to offer or cause to be offered that gold for sale. The main evidence against the appellant was an incriminating statement made by the appellant to the Assistant Controller of Foreign Exchange, recorded under reg. 29(1) of the Finance Regulations. On appeal, it was argued that the statement was wrongfully admitted in evidence.

Held: (1) the Controller's power under reg. 29(1) of the Finance Regulations to require information is limited to two purposes, firstly to securing compliance with the Regulations and secondly to detecting evasions of the Regulations; (2) in this case the Controller exceeded his powers in taking the statement and the statement was inadmissible under s. 24 of the Evidence Ordinance.

MAGISTRATE'S APPEAL.

D. S. Marshall for the appellant.

A. V. Winslow (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Brown, J.: — The appellant was convicted under Reg. 17(1) of the Finance Regulations, 1950, upon a charge that he, being a person resident in Malaya and being entitled to sell 130 tahils of gold, did fail to offer, or cause to be offered, that gold for sale.